

ESTTA Tracking number: **ESTTA578774**

Filing date: **12/24/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91211873
Party	Plaintiff Green Ivy Educational Consulting, LLC
Correspondence Address	MARK LERNER SATERLEE STEPHENS BURKE & BURKE LLP 230 PARK AVENUE, SUITE 1130 NEW YORK, NY 10169-0079 UNITED STATES mlerner@ssbb.com
Submission	Motion to Compel Discovery
Filer's Name	Mark Lerner
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Signature	/mark lerner/
Date	12/24/2013
Attachments	2013 12 24 Motion to Compel.pdf(21986 bytes) 2013 12 24 Memorandum of Law in Support of Motion to Compel.pdf(40766 bytes) 2013 12 24 Lerner Declaration in Support of Motion to Compel with Exhibits.pdf(939456 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Green Ivy Educational Consulting, LLC, :
 :
Opposer, : Opposition No. 91211873
 :
v. : Serial Nos.: 85775379, 85775380
 : and 85775382
 :
Green Ivy Holdings LLC, : Marks: GREEN IVY, GREEN
 : IVY SCHOOLS and GREEN
Applicant. : IVY LEARNING
-----X

**OPPOSER’S MOTION FOR AN ORDER TO COMPEL PRODUCTION
AND RESPONSES TO INTERROGATORIES**

Pursuant to Rule 37 of the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120(e) and TBMP §523.01, Green Ivy Educational Consulting, LLC (“Opposer”), HEREBY MOVES THIS Board for an order compelling Applicant, Green Ivy Holdings LLC (“Applicant”) immediately to respond to and produce documents responsive to Opposer’s Request for the Production of Documents and to respond to Opposer’s First Set of Interrogatories, all without objection on the merits.

The facts and argument in support of Opposer’s motion are set forth in Opposer’s Memorandum in Support of its Motion for an Order to Compel Production and Responses to Interrogatories, submitted herewith.

Dated: New York, New York
December 24, 2013

Respectfully submitted,

SATTERLEE STEPHENS BURKE & BURKE LLP

By: 
Mark Lerner

Jennifer Philbrick McArdle
Attorneys for Opposers
230 Park Avenue
New York, New York 10169
Telephone: (212) 818-9200
Facsimile: (212) 818-9606

CERTIFICATE OF SERVICE
(37 C.F.R. § 2.119)

I declare under penalty of perjury that on the 24th day of November, 2013, OPPOSER'S MOTION FOR AN ORDER TO COMPEL PRODUCTION AND RESPONSES TO INTERROGATORIES, MEMORANDUM OF LAW IN SUPPORT OF OPPOSER'S MOTION TO COMPEL PRODUCTION AND RESPONSES TO INTERROGATORIES and Declaration of Mark Lerner were served on applicant, GREEN IVY HOLDINGS LLC, by delivering a true and correct copy, by First Class Mail, postage prepaid, to:

Joseph R. Englander, Esq.
Shutts & Bowen LLP
200 E. Broward Blvd., Ste. 2100
Fort Lauderdale, Florida 33301-1972



Mark Lerner

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Green Ivy Holdings LLC, : Marks: GREEN IVY, GREEN
 : IVY SCHOOLS and GREEN
Applicant. : IVY LEARNING
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**MEMORANDUM OF LAW IN SUPPORT OF OPPOSER’S MOTION
TO COMPEL PRODUCTION AND RESPONSES TO INTERROGATORIES**

Pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120(e) and TMBP § 523.01, Opposer, Green Ivy Educational Consulting, LLC (“Opposer” or “GIEC”), by its attorneys Satterlee Stephens Burke & Burke LLP, hereby moves the Trademark Trial and Appeal Board (the “Board”) for an Order compelling Applicant, Green Ivy Holdings (“Applicant”), to respond to Opposer’s respond to and produce documents responsive to Opposer’s Request for the Production of Documents and to respond to Opposer’s First Set of Interrogatories, all without objection.

PRELIMINARY STATEMENT

GIEC commenced offering various educational services including academic coaching, test preparation counseling, curriculum development, workshops and consultation services relating to the implementation of its organizational and time management program into school curricula and home environments under the mark GREEN IVY at least as early as 2004.

Despite apparently having undertaken a search which identified GIEC’s use of the mark GREEN IVY in, at a minimum, California, Applicant nonetheless filed applications to register

the marks GREEN IVY, GREEN IVY SCHOOLS and GREEN IVY LEARNING. Though Applicant was advised that GIEC has in fact used the mark GREEN IVY around the country and has a national reputation, it persisted with the application.

GIEC commenced this opposition in August 2013, to challenge the application for federal registration of the marks GREEN IVY, GREEN IVY SCHOOLS, and GREEN IVY LEARNING, all of which were filed on the basis of intent to use in connection with educational services, office administration for schools, nearly a decade after GIEC commenced its use of the GREEN IVY mark for similar services.

GIEC has at all times acted in good faith to settle this dispute or proceed with the opposition. Applicant, however, has continually stalled and failed to engage in the process. Following an attempt at voluntary exchange of documents – GIEC provided documents to Applicant, but Applicant did not provide any in return – GIEC served discovery requests, interrogatories and requests to admit on Applicant. Applicant, without any excuse or justification, simply failed to respond to any of the discovery served by GIEC without proffering any excuse or seeking any additional time. When contacted by GIEC's counsel, Applicant acknowledged its failure to provide documents and responses, which were admittedly owing, but did not propose any schedule upon which the responses and documents would be produced. Given the complete failure of Applicant to respond and engage in a meaningful discussion regarding proposed production, GIEC is forced to make this motion.

GIEC respectfully submits that it is entitled to an order compelling responses, without objection, to document requests and interrogatories within fifteen days. GIEC respectfully requests that the Board not suspend proceedings during its consideration of this motion, which suspension would only reward Applicant for its delay.

STATEMENT OF FACTS

GIEC instituted this action on August 5, 2013 by filing a Notice of Opposition. Following the initial conference between the parties, GIEC voluntarily provided documents evidencing its use of the mark without service of any discovery demands expecting similar voluntary production of documents by Applicant based on its representation that it would provide such documents. These documents were never forthcoming. Lerner Decl. ¶ 4.

Early efforts to settle the opposition have proven unavailing and Applicant has engaged in an effort to delay proceedings. Lerner Decl. ¶ 5. On November 13, 2013 – the deadline for serving initial disclosures – Applicant contacted GIEC and expressed a willingness to meet to discuss settlement. During a phone call on that day, Applicant requested an adjournment of the deadline to serve initial disclosures. GIEC refused given the lack of meaningful discussions to date, but expressed a willingness to meet to discuss settlement. On or about November 14, 2013, GIEC proposed a settlement meeting the following week. Applicant never responded. Lerner Decl. ¶ 6.

On November 13, 2013 following service of its Initial Disclosures, GIEC served its Request for Production of Documents and Request for Admissions and First Set of Interrogatories on Applicant, copies of which are annexed to the Lerner Affidavit as Exhibits A and B. Lerner Decl. ¶ 7. The deadline to respond to these discovery requests was December 18, 2013. Lerner Decl. ¶ 9. GIEC has also served Notices of Deposition scheduling depositions for January 8, 9 and 17. Applicant has never responded to the deposition notices. It has not indicated that these dates are in any way inconvenient or difficult. Lerner Decl. ¶ 8.

No responses to written discovery requests, interrogatories or requests to admit were served on December 18, 2013 or thereafter. Applicant never contacted GIEC while the requests

were pending and never advised it that it would not meet the December 18, 2013 deadline.

Lerner Decl. ¶ 9.

On December 23, 2013, counsel for GIEC contacted counsel for Applicant to seek information on why there had been no production and whether and when it could expect responses to be provided. Counsel offered no excuse or justification for the failure to respond. Rather, counsel advised only that Applicant was aware documents and interrogatory responses were due and that he was attempting to speak to his client. He could not provide any information about when he might speak to his client or when he anticipated being in a position to respond to the discovery requests. Lerner Decl. ¶ 11.

This motion to compel followed.

ARGUMENT

Applicant's utter failure to respond to GIEC's discovery requests is completely unjustified and unexcused. Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. §2.120(a)(3), responses to interrogatories and document requests must be served within thirty days from the date of service. Under 37 C.F.R. §2.120(e), a motion to compel is permitted when a party fails timely to respond to discovery.

When no responses to discovery requests are served, the Board has great leeway in determining whether a forfeiture should be found due to such failure. *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000). In a circumstance where there is no excuse for the failure to respond to discovery requests and interrogatories, the party may be properly found to have forfeited its right to object to discovery. TMBP §403.03, 405.04; *Envirotech Corp. v. Compagnie Des Lampes*, 219 USPQ 448, 449 (TTAB 1979) (excusable neglect not shown where opposer was out of the country and, upon return, failed to ascertain that responses were due).

Here, absolutely no excuse was offered for the failure to respond. Applicant never contacted GIEC to seek an extension of the deadline, nor to advise GIEC of the likely delay of responses. It is uncertain whether or when Applicant would ever have contacted GIEC, had GIEC not telephoned Applicant to inquire as to the status of the responses. When contacted by GIEC, Applicant did not proclaim to have been unaware of the deadlines. To the contrary, it freely acknowledged that responses were due and owing. Nor did Applicant advise that the deadlines could not be met due to circumstances beyond its control. Indeed, counsel simply noted that he was attempting to reach his client and did not know when they would speak or when documents and responses would be provided.

Applicant was also aware of the depositions that were noticed by GIEC for early and mid-January, but did not advise that they were inconvenient in any way. GIEC had noticed the depositions three weeks following the deadline for responses to discovery so that it could keep the opposition moving promptly forward and so that it would have the benefits of having discovery in hand at the time of the depositions. The failure timely to respond will likely delay the depositions scheduled by GIEC and never objected to by Applicant. Rather than contact GIEC in a timely and professional manner to seek a delay or rescheduling of the depositions, Applicant simply failed to respond to discovery, knowing that would have the likely effect of delaying the depositions. While GIEC could proceed with the depositions, it would potentially have to re-call the deponents for further testimony upon receipt of the requested documents. GIEC should not be forced either to delay its depositions or put to the additional expense of multiple days of depositions when absolutely no legitimate basis has been proffered by Applicant for its delay.

The purported unavailability of Applicant to confer with counsel, even after the known deadline for responding to discovery had passed, is not a proper basis for failing to respond and should not be countenanced by the Board.


CONCLUSION

The blatant and unrepentant failure of applicant to respond to discovery requests and interrogatories warrants an order compelling responses and documents to be served immediately and without objections on the merits. GIEC respectfully requests an Order compelling discovery be entered and that during the pendency of the motion the Board no suspend proceedings so that Applicant does not further profit from further delay of this opposition.

Date: December 24, 2013

Respectfully submitted,

SATTERLEE STEPHENS BURKE & BURKE LLP

By: 
Mark Lerner
Jennifer Philbrick McArdle
Attorneys for Opposers
230 Park Avenue
New York, New York 10169
Telephone: (212) 818-9200
Facsimile: (212) 818-9606

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Green Ivy Educational Consulting, LLC,	:
	Opposition No. 91211873
Opposer,	:
	Serial Nos.: 85775379, 85775380
v.	: and 85775382
Green Ivy Holdings LLC,	:
	Marks: GREEN IVY, GREEN
Applicant.	: IVY SCHOOLS and GREEN
	: IVY LEARNING
-----	X

I, Mark Lerner, declare under penalty of perjury:

I am a partner with the law firm of Satterlee Stephens Burke & Burke LLP, counsel for Opposer, Green Ivy Educational Consulting, LLC (“GIEC” or “Opposer”). I submit this declaration in support of GIEC’s Motion for an Order to Compel Production and Responses to Interrogatories.

1. Since at least as early as May, 2004, GIEC has provided various educational services including academic coaching, test preparation counseling, curriculum development, workshops and consultation services relating to the implementation of its organizational and time management program into school curriculums and home environments under the mark GREEN IVY.

2. GIEC instituted this action on August 5, 2013 by filing a Notice of Opposition.

3. During the initial conference between the parties, Applicant acknowledged that it was aware of GIEC and its use of the mark GREEN IVY in, at a minimum, California. Applicant had nonetheless filed applications to register the marks GREEN IVY, GREEN IVY SCHOOLS and GREEN IVY LEARNING after learning of GIEC’s existence. Though Applicant was advised that GIEC has in fact used the mark GREEN IVY around the country and has a national reputation, it persisted with the application.

4. Following the initial conference between the parties, GIEC voluntarily provided documents evidencing its use of the mark without service of any discovery demands expecting

similar voluntary production of documents by Applicant based on its representation that it would provide such documents. These documents were never forthcoming.

5. Early efforts to settle the opposition have proven unavailing, and Applicant has engaged in an effort to delay proceedings.

6. On November 13, 2013 – the deadline for serving initial disclosures – Applicant contacted GIEC and expressed a willingness to meet to discuss settlement. During a phone call on that day, Applicant requested an adjournment of the deadline to serve initial disclosures. GIEC refused given the lack of meaningful discussions to date, but expressed a willingness to meet to discuss settlement. On or about November 14, 2013, GIEC proposed a settlement meeting the following week. Applicant never responded.

7. On November 13, 2013 following service of its Initial Disclosures, GIEC served its Request for Production of Documents and Request for Admissions and First Set of Interrogatories on Applicant, copies of which are annexed hereto as Exhibits A and B.

8. GIEC has also served Notices of Deposition scheduling depositions for January 8, 9 and 17. Applicant has never responded to the deposition notices. It has not indicated that these dates are in any way inconvenient or difficult.

9. The deadline for Applicant to respond to the written discovery requests was December 18, 2013. However, no responses to written discovery requests, interrogatories or requests to admit were served on December 18, 2013 or thereafter.

10. Applicant never contacted GIEC while the requests were pending and never advised it that it would not meet the December 18, 2013 deadline.

11. On December 23, 2013, the undersigned contacted counsel for Applicant to seek information on why there had been no production and whether and when it could expect responses to be provided. Counsel for Applicant offered no excuse or justification for the failure to respond. Rather, counsel advised only that Applicant was aware documents and interrogatory responses were due and that he needed to speak to his client. He did not provide any specific information about when he might speak to his client or when he anticipated being in a position to

respond to the discovery requests.

12. Counsel for Applicant also advised that he was aware of the deposition schedule based on the notices served by GIEC, but did not otherwise comment.

13. The undersigned made it clear that GIEC would like to maintain the deposition schedule, but that lack of timely service of responsive documents may make it difficult to do so.

I declare under laws of perjury of the United States of America that the foregoing is true and correct and this declaration was executed on December 24, 2013 in New York, New York.



Mark Lerner

are to be produced at the offices of Satterlee Stephens Burke & Burke LLP, 230 Park Avenue, New York, New York 10169, promptly after receipt thereof.

DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

A. "Person" means any individual, corporation, association, organization, firm, company, partnership, joint venture, trust, estate, or other business, legal or governmental entity, whether or not possessing a separate juristic existence in its own right, or any other group collectively assembled to transact any kind of business at all.

B. The term "communication" refers to any exchange or transfer of information between two or more persons whether written, oral or any other form.

C. The term "relate to," including its various forms such as "relating to" and "related to" shall mean: consist of, refer to, reflect, concern, describe, discuss, comment on, embody, respond to, support, contradict, or be in any way logically or factually connected with the matter discussed as the context makes appropriate.

D. "Document" is used herein in its customary broad sense as defined in Fed. R. Civ. P. 34(a), and includes, without limitation, the original or any copy of any and all written, printed, typed, recorded or graphic matter, electronic files whether maintained on floppy disks, hard drives, back-up tapes, flash memory, CD-ROMs, DVD-ROMs, or zip disks, cloud storage, photographic matter, and sound reproduction by a magnetic recording, tapes, records or other devices, however produced or reproduced, as well as interoffice and intraoffice memoranda, staff reports, contracts, engagement letters, electronic mail, word processing files, computer programs, agreements, correspondence, letters, notes, charts, tabulations, data compilations, diagrams, drafts of a document, summaries, work papers, accounts, invoices, receipts, checks, check stubs,

time slips, deposit slips, ledgers, journals, balance sheets, income statements, accounts, and records or transcripts of meetings, conferences, and telephonic or other conversations of communications, which are in the possession, custody or control of Applicant (or of its employees, agents, or attorneys or of any persons acting for Applicant or on its behalf), or to which Applicant has access.

E. “You,” “Your,” “Applicant,” or “GIH” means GIH, Jennifer Jones, and any employees, agents, representatives, consultants or licensees.

F. “Opposer” or “GIEC” means Green Ivy Educational Consulting, LLC, Ana Homayoun, and any employees, agents, representatives, consultants or licensees.

G. “Marks” means the marks applied for by GIH in Application Serial Nos. 85775379, 85775380 and 85775382 and any amendments thereto, including GREEN IVY, GREEN IVY SCHOOLS and GREEN IVY LEARNING. Reference to the Marks herein means any individual Mark or combination thereof.

H. “Applications” means Application Serial Nos. 85775379, 85775380 and 85775382 and any amendments thereto. Reference to the Applications herein means any individual Application or combination thereof.

I. “Applicant’s Services” means the services as set forth in the Applications.

J. “Answer” means the Answer to the Notice of Opposition.

INSTRUCTIONS

1. These Requests, unless otherwise specifically stated, should be read to be limited to seeking documents relevant to the creation, adoption, use and promotion of the Marks in the United States.

2. If Applicant cannot produce any document or part of a document specified below because such document or part of a document is no longer in the custody, control or possession of Applicant or of its agents or attorneys or of any persons acting for Applicant or on its behalf, Applicant shall furnish for each such document or part of a document the following information.

a. A brief description of the document, including, if reasonably identifiable by Applicant:

i. the type of document;

ii. its date;

iii. its author(s);

iv. each addressee and each person who received a copy of the document;

v. a description of the contents of the document.

b. The reason Applicant cannot produce the document or part of a document.

3. If Applicant refuses to produce any document or part of a document specified below on the basis of some privilege or immunity with respect to such document, Applicant shall serve upon counsel for Opposer, within thirty (30) days of the date such document or part of a document is withheld from production on the basis of such privilege or immunity, an inventory setting forth for each document or part of a document the following information:

a. the type of document;

b. its date;

c. its author(s);

d. each addressee and each person who received a copy of the document;

e. its present location;

- f. its present custodian;
- g. the number of pages of the document;
- h. a description of the contents of the document (subject to the appropriate privilege or immunity);
- i. a statement of the basis for the claim of privilege or immunity.

DOCUMENT REQUESTS

1. All documents referring or relating to the selection or consideration of the Marks.
2. All documents referring or relating to trademark and/or service mark searches or investigations conducted by or on behalf of Applicant in connection with the Marks.
3. All documents received by Applicant from any attorney or any other person with respect to the availability or unavailability of the Marks, not including advice of an attorney.
4. All documents relating to studies, focus groups, customer evaluations, research, and/or surveys relating to any mark incorporating the term “green ivy,” or any variation thereof under consideration for Applicant’s goods and services.
5. All documents referring or relating to Applicant’s proposed adoption of the Marks.
6. All documents relating to any state or federal trademark application made by You in connection with the Marks.
7. All documents referring or relating to, or comprising any license or assignment of any trademark rights for the Marks.
8. Documents sufficient to show the goods and services on or in connection with which the Marks are used, have been used or are intended to be used.

9. If Applicant claims the Marks have been used in commerce, all documents and things evidencing Applicant's use of each of the Marks in commerce.

10. If Applicant claims the Marks have been used in commerce, all documents and things establishing Applicant's claimed date of first use of each of the Marks.

11. All documents and things evidencing Applicant's purported intent to use the Marks in commerce in connection with Applicant's Services, including, but not limited to any specific business plans, contracts or correspondence.

12. Specimens of all types of goods produced, marketed or sold by Applicant bearing the Marks.

13. All documents regarding any seminars or other live or online presentations developed or attended by Applicant using the Marks.

14. All documents referring or relating to, or comprising, any plan Applicant has to expand the type of goods or services it offers using the Marks.

15. Documents sufficient to show the prices for Applicant's goods and services marketed under the Marks.

16. Documents sufficient to show sales by Applicant or any licensees, broken down by month, of the goods or services under each of the Marks in each state or territory of the United States since the Marks have been in use.

17. Documents sufficient to show the markets and channels of trade in the United States through which Applicant markets, distributes or otherwise sells, or intends to market, distribute or otherwise sell, products or services using the Marks.

18. Documents sufficient to show the launch date, URL address and closure date (if any) for any and all websites launched or maintained by Applicant or at Applicant's direction that have marketed or sold any goods bearing the Marks.

19. Documents sufficient to show the number of unique visitors to the website at the URL address www.greenivyschools.com, or any other URL address identified in Interrogatory 15 on a monthly basis since the site's creation.

20. All documents regarding the types and classes of consumers to whom Applicant markets or intends to market its goods and services identified by the Marks.

21. Copies of all advertising, promotional materials and packaging prepared for use or possible use in connection with Applicant's goods or services offered or intended to be offered under the Marks.

22. Documents sufficient to identify all the publications and broadcast media in which Applicant has advertised, is advertising, or has planned to advertise any of its products or services offered or to be offered under the Marks.

23. Copies of all television commercials, radio scripts, podcasts and other media advertising not previously requested in which any of the Marks or any variation thereof appears or is mentioned.

24. Copies of all articles, broadcasts, blog posts, or other media coverage not solicited, paid for, or authored by Applicant, that, to Applicant's knowledge, features, lists or is related to the Marks or any product bearing any of the Marks.

25. To the extent not already produced in connection with the foregoing, copies of all publications that, to Applicant's knowledge, featured, listed, or provided press coverage of goods bearing the Marks from the time each Mark was created through the present.

26. All documents which refer or relate to any complaints related in any way to Applicant's products or services bearing the Marks.

27. Copies of all coexistence agreements or settlement agreements related to the Marks, including any schedules or amendments to said coexistence or settlement agreements and communications and documents related to all said agreements.

28. Any and all evidence of actual confusion between Applicant's use of the Marks and Opposer's GREEN IVY mark, Opposer or Ana Homayoun, including but not limited to emails or other electronic communications received through greenivy.com and greenivyschools.com.

29. All documents referring or relating to or comprising any communication, oral or written, received by Applicant from any Person which suggests, implies, or infers that Applicant or Jennifer Jones may be connected or associated with Ana Homayoun, Ms. Homayoun's books or other publications or GIEC, or which includes an inquiry as to whether there is or may be such a connection or association, including but not limited to emails or other electronic communications received through greenivy.com and greenivyschools.com.

30. All documents referring or relating to Ana Homayoun, GIEC or GIEC's use of the GREEN IVY mark.

31. Documents sufficient to show the ownership and corporate structure of GIH.

32. Documents sufficient to show any investors in GIH.

33. All documents, other than those produced in response to any of the foregoing requests, upon which Applicant intends to rely at trial.

CERTIFICATE OF SERVICE
(37 C.F.R. § 2.119)

I declare under penalty of perjury that on the 13th day of November, 2013, OPPOSER'S REQUEST FOR PRODUCTION OF DOCUMENTS was served on applicant, GREEN IVY HOLDINGS LLC, by delivering a true and correct copy, by First Class Mail, postage prepaid, to:

Joseph R. Englander, Esq.
Shutts & Bowen LLP
200 E. Broward Blvd., Ste. 2100
Fort Lauderdale, Florida 33301-1972


Jennifer Philbrick McArdle

Exhibit B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Green Ivy Educational Consulting, LLC, :
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Opposer, : Opposition No. 91211873
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v. : Serial Nos.: 85775379, 85775380
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Green Ivy Holdings LLC, : Marks: GREEN IVY, GREEN
 : IVY SCHOOLS and GREEN
Applicant. : IVY LEARNING
-----X

**OPPOSER’S REQUEST FOR
ADMISSIONS AND FIRST SET OF INTERROGATORIES**

Pursuant to Rules 33 and 36 of the Federal Rules of Civil Procedure and 37 C.F.R.
§ 2.120, Green Ivy Educational Consulting, LLC (“Opposer”), requests that Green Ivy Holdings
LLC (“GIH” or “Applicant”) respond to the following interrogatories and requests for admission,
in the manner and within the time prescribed by the Federal Rules of Civil Procedure and 37
CFR §§ 2.119, 2.120(a)(3).

DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

A. “Person” means any individual, corporation, association, organization, firm,
company, partnership, joint venture, trust, estate, or other business, legal or governmental entity,
whether or not possessing a separate juristic existence in its own right, or any other group
collectively assembled to transact any kind of business at all.

B. The term “communication” refers to any exchange or transfer of information
between two or more persons whether written, oral or any other form.

C. The term “relate to,” including its various forms such as “relating to” and “related to” shall mean: consist of, refer to, reflect, concern, describe, discuss, comment on, embody, respond to, support, contradict, or be in any way logically or factually connected with the matter discussed as the context makes appropriate.

D. “Document” is used herein in its customary broad sense as defined in Fed. R. Civ. P. 34(a), and includes, without limitation, the original or any copy of any and all written, printed, typed, recorded or graphic matter, electronic files whether maintained on floppy disks, hard drives, back-up tapes, flash memory, CD-ROMs, DVD-ROMs, or zip disks, cloud storage, photographic matter, and sound reproduction by a magnetic recording, tapes, records or other devices, however produced or reproduced, as well as interoffice and intraoffice memoranda, staff reports, contracts, engagement letters, electronic mail, word processing files, computer programs, agreements, correspondence, letters, notes, charts, tabulations, data compilations, diagrams, drafts of a document, summaries, work papers, accounts, invoices, receipts, checks, check stubs, time slips, deposit slips, ledgers, journals, balance sheets, income statements, accounts, and records or transcripts of meetings, conferences, and telephonic or other conversations of communications, which are in the possession, custody or control of Applicant (or of its employees, agents, or attorneys or of any persons acting for Applicant or on its behalf), or to which Applicant has access.

E. “You,” “Your,” “Applicant” or “GIH” means Green Ivy Holdings LLC, Jennifer Jones and any employees, agents, representatives, consultants or licensees.

F. “Opposer” or “GIEC” means Green Ivy Educational Consulting, LLC, Ana Homayoun, and any employees, agents, representatives, consultants or licensees.

G. “Marks” means the marks applied for by GIH in Application Serial Nos. 85775379, 85775380 and 85775382 and any amendments thereto, including GREEN IVY, GREEN IVY SCHOOLS and GREEN IVY LEARNING. Reference to the Marks herein means any individual Mark or combination thereof.

H. “Applications” means Application Serial Nos. 85775379, 85775380 and 85775382 and any amendments thereto. Reference to the Applications herein means any individual Application or combination thereof.

I. “Applicant’s Services” means the services as set forth in the Applications.

J. “Answer” means the Answer to the Notice of Opposition.

INSTRUCTIONS FOR REQUEST FOR ADMISSIONS

1. If you object to any Request, the reasons therefore shall be fully stated in your response. Your responses shall specifically deny the matter requested to be admitted or set forth in detail the reasons why you cannot truthfully admit or deny the matter.

2. Any denial of the matter requested to be admitted shall fairly meet the substance of the matter requested to be admitted and when good faith requires you to qualify an answer, or deny only a part of the matter requested to be admitted, you shall specify so much of the matter that is true and qualify or deny only the remainder.

3. You may not give lack of information or knowledge as a reason for failure to admit or deny a matter unless you, in good faith, state that you have made a reasonable inquiry and the information known or readily ascertainable or obtainable by you is insufficient to enable you to admit or deny the matter.

4. If a matter requested to be admitted constitutes a genuine issue for trial, the matter is not, for that reason alone, subject to a legitimate or good faith objection.

REQUESTS FOR ADMISSION

1. You filed Your applications to register the Marks on November 9, 2012.
2. You filed amendments to Your applications to register the Marks on June 21, 2013.
3. You use or intend to use the Marks to provide Applicant's Services.
4. As of the date of filing the Applications, You had not used the Marks in interstate commerce in connection with Applicant's Services.
5. GIH is the registrant of the domain name www.greenivyschools.com and www.greenivy.com.
6. As of the date of filing the Applications, You knew of the existence of Green Ivy Education Consulting, LLC.
7. As of the date of filing the Applications, You were aware that Opposer used the GREEN IVY mark.
8. As of the date of filing the Applications, You were aware that Opposer provides tutoring services to students under the GREEN IVY mark.
9. As of the date of filing the Applications, You were aware that Opposer provides educational consulting services to schools under the GREEN IVY mark.
10. As of the date of filing the Applications, You were aware that Opposer conducts seminars and speaking engagements and publish articles and books on topics in the field of education under the GREEN IVY mark.
11. As of the date of filing the Applications, You had visited either anahomayoun.com or greenivyed.com.

12. You have received correspondence intended for Ana Homayoun or Green Ivy Educational Consulting, LLC.

13. The email attached as Exhibit A is a genuine copy of an email from Jennifer Jones forwarding an email to Ana Homayoun.

INSTRUCTIONS FOR INTERROGATORIES

1. Your answers must include all information concerning the matters inquired about available to you, your attorney or attorneys or other agents and to investigators or other agents for you or your attorney or attorneys.

2. If you cannot answer any interrogatory fully and completely after exercising due diligence to inquire and secure the information necessary to do so, please so state and answer each such interrogatory to the full extent you deem possible, specify the portion of each interrogatory that you claim to be unable to answer fully and completely, state the facts upon which you rely to support your contention that you are unable to answer the interrogatory fully and completely, and state what knowledge, information or belief you have concerning the unanswered portion of each such interrogatory.

3. Whenever you are requested to “identify” an individual by any of the interrogatories herein, specify the full name, present position and present business affiliation, business address and business telephone number of such individual. Whenever you are requested to “identify” documents by any of the interrogatories herein, you shall specify, if known, its author, recipient(s), date, and subject matter.

4. If any privilege is asserted as to any information requested, or as to any documents required to be identified or produced by an interrogatory:

a. State the precise nature of the privilege claimed;

- b. State the basis for privilege claimed relative to the specific information contained in the document;
 - c. State all facts contained within the document, deleting only opinions, theories, mental impressions and non-factual statements;
 - d. If privilege is asserted with respect to any information, identify each person who has knowledge of such information, or to whom such information has been communicated in any matter or fashion, whether or not privilege is claimed with respect to such communication.
5. These interrogatories shall be continuous in nature. If you subsequently obtain information that renders the answers to these interrogatories incomplete or inaccurate, you are to amend the answers to make them complete and accurate.

INTERROGATORIES

1. If the answers to any of the foregoing Requests for Admission are anything but an unqualified admission, please describe the basis for your response, including a description of the key facts which support your response.
2. State the date Applicant was incorporated and the states in which Applicant is qualified or licensed to do business.
3. Describe the corporate structure of the Applicant and owner of GIH.
4. Identify and describe any investors in GIH.
5. Identify all persons known to Applicant who took part in or were responsible for (i) the creation of the Marks; (ii) the selection of the Marks for use in connection with Applicant's Services; (iii) adoption of the Marks for use in connection with Applicant's Services; and (iv) the earliest use, if any, of the Marks in connection with Applicant's Services.
6. State whether any searches or investigations were conducted by You or any person on Your behalf (including attorneys) to determine whether the Marks were available as a trademark or service mark and, if so:

- a. identify the person responsible for initiating each search;
 - b. identify the person who conducted each search;
 - c. identify classes, the date of the search, and all registered and common law trademarks, trade names, and corporate names uncovered in each such search;
 - d. identify such search and all documents relating to each such search.
7. Set forth in detail the basis for Applicant's claim that it has a bona fide intent to use the Mark in commerce, including any specific plans for offering the Applicant's Services under the Marks.
8. Identify all steps that Applicant has taken to put the Marks into use in connection with the Applicant's Services.
9. If you claim that the Marks are currently in use:
 - a. set forth the claimed date of first use for each of the Marks, and
 - b. identify all documents that support the claimed date(s) of first use,
 - c. Set forth the approximate dollar amount of Applicant's annual sales or number of users of the services offered under the Marks, if any, broken down by year and by state;
 - d. State the manner in which the Marks were used, (e.g., by affixation to websites, publicity materials, instructional materials, advertisements).
 - e. Identify the first date that Applicant marketed or advertised any goods bearing the Marks and describe the means by which the goods were marketed.
 - f. State the geographic areas in which any goods or services bearing the Marks have been marketed and/or distributed.

10. Set forth in detail the nature of the following services that Applicant (i) has provided, and (ii) intends to provide, including the location of such services, the medium in which they will be offered, the proposed content and/or subject matter of the services, the intended instructors or service providers and any other intended participants. Specifically, please provide such a description with respect to the following services described in the Applications:

- a. The “providing pre-kindergarten through 12th grade classroom instruction “
- b. The “developing curriculum for others,” including the intended identity of the “others;”
- c. The “providing after school educational programs”
- d. The “providing classes, workshops and seminars;”
- e. The “testing, analysis and evaluation.”

11. State whether Applicant offers or intends to offer each of the following as part of Applicant’s Services or otherwise intends to offer them as branded products or services under the Marks:

- a. Websites featuring information on education or educational services;
- b. Printed or online advice columns or other publications regarding education or educational services;
- c. Books;
- d. Audio books;
- e. Podcasts;
- f. Blogs;
- g. Seminars or speaking engagements;
- h. Printed instructional materials;

- i. Online instructional materials.
12. State the intended customers or audience for the goods and services that are (i) currently offered using the Marks and (ii) intended to be offered using the Marks.
13. Identify the actual trade channels through which GIH (i) has sold and now is offering goods or services using the Marks or any variation thereof, and (ii) through which it intends to sell or offer goods or services using the Marks or any variation thereof.
14. Identify all purchasers or users by class (e.g., retailers, educators, students, general public) of Applicant's Services offered under the Marks.
15. Identify the launch date, URL address, and closure date (if any) for any websites launched or maintained by Applicant or at Applicant's direction that include the Marks or have marketed or sold any goods bearing the Marks.
16. Set forth the number of unique visitors to each of the websites identified in the foregoing Interrogatory on a monthly basis from the creation of the website to the present.
17. Set forth Applicant's annual expenditures, if any, for advertising and promoting goods and services offered under the Marks.
18. Identify the media, if any, through which GIH has advertised or promoted its goods or services or intends to advertise or promote its goods or services under the Marks or any variation thereof, including but not limited to the names of all newspapers, magazines, journals, radio stations, television stations, websites and Internet search engines.
19. List all items of publicity material not already identified in the foregoing Interrogatory in which GIH has advertised or promoted goods or services bearing the Marks.
20. Identify each person employed by Applicant and each outside agent or agency retained by Applicant who has been or now is responsible for (a) marketing, advertising and

promotion, and (b) bookkeeping and accounting with respect to any goods or services offered for sale or sold under the Marks or any variations thereof.

21. Identify any person from whom You obtained rights to use the Marks.

22. Identify any person to whom You have granted rights to use the Mark and any document granting such rights.

23. State whether You or any person acting for You or on Your behalf has received any communication, oral or in writing, from any Person which suggests, implies, or infers that Applicant or Jennifer Jones may be connected or associated with Ana Homayoun, Ms. Homayoun's books or other publications or Green Ivy Educational Consulting, LLC, or which includes an inquiry as to whether there is or may be any such connection or association.

24. To the extent not already disclosed in connection with the foregoing Interrogatory, identify any instance or occurrence in which any Person was actually confused between Applicant or Jennifer Jones and Ana Homayoun, Ms. Homayoun's books or other publications or Green Ivy Educational Consulting, LLC due to their use of their trademarks, trade name or the Marks. Describe with specificity each such instance or occurrence.

25. Identify any complaints received by GIH or Jennifer Jones related in any way to any goods or services bearing the Marks.

26. Identify the date of and the manner in which You became aware of Opposer and Ana Homayoun, Ms. Homayoun's work in the field of education or Ms. Homayoun's business activities, including that she is active in the field of educational services.

27. Identify the date of and the manner in which You gained actual notice as to Opposer's use of the name "Green Ivy."

28. Identify the date of and the circumstances surrounding Your first visit to either anahomayoun.com or greenivied.com.

29. Set forth in detail the factual basis for the claim in paragraph 15 of the Answer that: "Opposer's alleged use of its GREEN IVY mark does not constitute use in commerce."

30. Set forth in detail the factual basis for the claim in paragraph 16 of the Answer that: "Applicant's use of its marks will not mistakenly be thought by the public to derive from the same source as Opposer's services, nor will such use be thought by the public to be a use by Opposer or with Opposer's authorization and/or approval."

31. Set forth in detail the factual basis for the claim in paragraph 17 of the Answer that: "Applicant's mark, when used with Applicant's services, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with the Opposer, or as to the origin, sponsorship or approval of Applicant's services by Opposer."

32. Identify each person who participated in the preparation of Applicant's responses to the foregoing interrogatories or furnished any information in response thereto.

33. Identify all documents relating to the subject matter of the foregoing interrogatories and the preparation of Applicant's responses thereto.

Dated: New York, New York
November 13, 2013

SATTERLEE STEPHENS BURKE & BURKE LLP

By: 

Mark Lerner

Jennifer Philbrick McArdle

Attorneys for Opposers

230 Park Avenue

New York, New York 10169

Telephone: (212) 818-9200

Facsimile: (212) 818-9606

EXHIBIT A

Subject: Fwd: Reaching out regarding our trademark discussion

From: Ana Homayoun (ana@greenivyed.com)

To: vicky@greenivyed.com;

Date: Tuesday, September 17, 2013 11:53 AM

Sent from my iPhone

Begin forwarded message:

From: Jennifer Jones <jjones@greenivy.com>
Date: September 17, 2013 9:21:39 AM PDT
To: "ana@greenivyed.com" <ana@greenivyed.com>
Subject: Reaching out regarding our trademark discussion

Dear Ana,

I think the note below was meant for you, but was glad to have this excuse to reach out. I am so impressed with what I have read about you.

I realize that your attorney has filed an opposition to our trademark filing, and we will be filing our response shortly, but I wonder if there is not a way for the two of us to avoid paying all of these legal fees and come to an understanding that we can both live with.

Would you be open to having a phone conversation to discuss?

Here are a few thoughts I wanted to share. I welcome yours as well.

I know you want to make sure you can continue to use your brand uninterrupted, and your focus appears to be on counseling and tutoring students. I have raised investor funding around my brand (our first school just opened last week), and it is important to me to be able to continue to use it in relation to schools.

Seems like there should be a way to accomplish both goals and coexist?

Maybe by type of use (schools vs consulting)? Maybe by geography? Or both?

I would also be happy to reimburse you for what you have spent so far in fees, and contribute what I would be saving in fees going forward. I think we would both like to put that funding toward better uses for the people we are here to serve. I worry sometimes that attorneys aren't always motivated for a quick resolution, when resolution could be found more directly with a simple

conversation.

If you have plans for New York City, I am also open to helping with those plans, and could provide cross-links on our website, etc. I do not see us as competition and, in fact, I very much admire your work and feel aligned with the messages you promote.

So, in the spirit of a fellow educator and as someone who, I believe, shares passions very similar to your own, I felt that I should reach out and see if you would like to discuss the brand issue. I suspect that once you and I understand the other's intent, we will find straightforward ways to make it work on both sides.

Please let me know if you are interested in having that discussion.

With kind regards,

Jennifer Jones

Jennifer Jones
Founder
Green Ivy Schools

212.627.0129
www.greenivyschools.com
www.bmpreschool.com

Begin forwarded message:

From: Colleen O'Kane <okanerowsey@sbcglobal.net>
Subject: Tutoring
Date: September 2, 2013 9:39:12 PM EDT
To: "info@greenivy.com" <info@greenivy.com>

Hello,

I would like information on your fees and availability for this school year. Also, how do you match a child with a tutor? I have two 8th grade boys who particularly need tutoring in math and how to study for tests. They are in accelerated math at Blach but while they seem to understand the work, rarely get higher than a B on the tests and often get C's even though they say the tests are not hard.

I have read your book and a friend's son goes there for tutoring.

Thank you!

Colleen

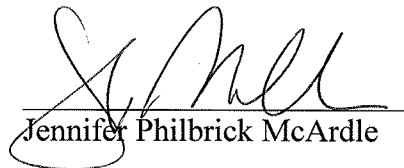
Sent from my iPhone

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CERTIFICATE OF SERVICE
(37 C.F.R. § 2.119)

I declare under penalty of perjury that on the 13th day of November, 2013, OPPOSERS' REQUEST FOR ADMISSIONS AND FIRST SET OF INTERROGATORIES was served on applicant, GREEN IVY HOLDINGS LLC, by delivering a true and correct copy, by First Class Mail, postage prepaid, to:

Joseph R. Englander, Esq.
Shutts & Bowen LLP
200 E. Broward Blvd., Ste. 2100
Fort Lauderdale, Florida 33301-1972


Jennifer Philbrick McArdle